Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

CASE NO. ~~OFFICE OF THE CLERK~~

SUPREME COURT of the UNITED STATES

OCTOBER, 1994 TERM

CHALLONER MORSE McBRIDE,

Petitioner,

vs.

STATE OF WISCONSIN,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FOR THE WISCONSIN SUPREME COURT

APPENDIX B

CHALLONER MORSE McBRIDE,
Pro Se
917 Oak Street
Delafield, WI 53018-1646
(414)646-9888

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TO

APPENDIX

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STATE OF WISCONSIN : DOOR COUNTY
CIRCUIT COURT

STATE OF WISCONSIN,
Plaintiff,

FILED

vs. Case No. 91-CF-146

J. RONALD McBRIDE and
CHALLONER MORSE McBRIDE,
Defendants.

MOTION TO SUPPRESS PHYSICAL EVIDENCE

Defendant Challoner Morse McBride, by her attorneys Gimbel, Reilly, Guerin & Brown, upon all the records, files and proceedings in this case, moves the court pursuant to the provisions of Wisconsin Statutes section 971.31(2) for an order suppressing for use as evidence any and all articles seized by law enforcement officers on or about June 4, 1991, from the premises located at 306 South Third Avenue, in the City of Sturgeon Bay, Door County, Wisconsin and any evidence flowing from those materials.

AS GROUNDS, Challoner Morse McBride

asserts that the taking of articles from the premises was without a lawful warrant and violated the rights guaranteed to her by the provisions of Article 1, Section 11 of the Wisconsin Constitution, the 4th and 14th Amendments to the United States Constitution and Chapter 968 of the Wisconsin Statutes. More specifically, to-wit: the issuing magistrate was not impartial, there was not sufficient evidence presented to constitute probable cause against Challoner Morse McBride, the seizure exceeded the bounds of the warrant and the police acted contrary to their legal authority.

Challoner Morse McBride further requests that this matter be set for an evidentiary hearing and that the parties be allowed to file additional briefs following that hearing.

This motion is based on the annexed brief.

Dated this 27th day of May, 1992.

GIMBEL, REILLY, GUERIN &

BROWN

By: s/ Franklyn M. Gimbel

Attorneys for Defendant
Challoner Morse McBride

POST OFFICE ADDRESS;

2400 Milwaukee Center
111 E. Kilbourn Avenue
Milwaukee, Wisconsin 53202

Telephone: 414/271-1440
2529I

STATE OF WISCONSIN : DOOR COUNTY
CIRCUIT COURT

STATE OF WISCONSIN,
Plaintiff,

FILED
vs. Case No. 91-CF-146

CHALLONER MORRIS (sic) McBRIDE,
Defendants.

NOTICE OF APPEAL

TO: Sandra Simonar
Clerk of Circuit Court
P.O. Box 670
Sturgeon Bay, WI

Gary J. Schuster
District Attorney
P.O. Box 670
Sturgeon Bay, WI 54235

NOTICE IS HEREBY GIVEN that the defendant in the above-captioned case appeals to the Court of Appeals, District III, from the whole of the order denying postconviction relief entered February 1, 1994, and from the whole of the judgements of conviction dated May 20, 1993, and the amended judgment of conviction dated February 11, 1994, in the Circuit Court for Door County, the Honorable Philip Kirk, presiding, in which the defendant was

convicted of one count of theft by bailee and three counts of theft by fraud contrary to secs. 943.20(1)(b) and 943.20(1)(d), Stats. and the court denied the defendant's motion for postconviction relief.

This is not an appeal within sec. 752.31(2), Stats.

This is not an appeal to be given preference pursuant to statute.

Dated this 15th day of February, 1994.

s/Glenn L. Cushing
Assistant State Public Defender
P.O. Box 7862
Madison, WI 53707-7862
(608)266-1971
Attorney for Defendant.

cc: Marilyn L. Graves
Clerk, Court of Appeals
cc: Matthew Frank
Assistant Attorney General
CERTIFIED MAIL RRR#P086 204 726

Defendant's Exhibit

A
8-26-92

McBRIDE LAW OFFICES
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306 South Third Avenue
STURGEON BAY, WISCONSIN 54235

(414)743-8877
CHALLONER MORSE McBRIDE
Attorney At Law

September 15,1989

Honorable Harold V. Froehlich
Chief Judge, 8th Judicial District
c/o William Sucha, Court Administrator
P.O. Box 1600
Green Bay, WI 54305-1600

RE: Zillmer v. Zillmer (Door County Case No. 87-FA-170)
Griep v. Griep (Door County Case No. 86-FA-119)
Shipyard Island Marina v. Gross (Door County Case No. 87-CV-286)

Dear Judge Froehlich:

I am writing this date to inform you of a Complaint I have against Judge John D. Koehn of the Door County Circuit Court. My complaint is regarding the following circumstances:

1. Zillmer v. Zillmer. This is a divorce

and custody matter which has been scheduled to be heard for the full day of Friday, September 16 as a #1 Case. Said Notice of Final Hearing being sent by the Court to both attorneys on March 18th, and my office receiving same on March 21, 1988. On this date, September 15th, I received a call from Attorney Wayne Peterson asking whether or not this date was still on my calendar. I stated to Mr. Peterson that yes, it had been on my calendar since March. Mr. Peterson stated that he had called in April and spoke to Mr. Wesley Gales, the Court Reporter for the Door County Circuit Court and had told him that he had a conflict on his calendar and wouldn't be able to hear Zillmer on the September 16th date. I was never aware of any conflict and did not receive a call or letter from Mr. Peterson that there was any problem. I was fully prepared and most eager to go forward with tomorrow's hearing because of the mental health of my client and her children. Wayne

Peterson informed me that he would be contacting the Court immediately this morning regarding this conflict, but that he just wanted to inform me of what was going on. I stated that I would, of course, object on my client's behalf.

Later that morning, the Judge's deputy clerk, Lori Miller, contacted my office and informed us that Zillmer was being bumped by the Judge. I vehemently objected to no avail. Later that morning, Wayne Peterson contacted me to set up a new court date and the Court gave us the option of May 8, 1989 as a # 1 Case or January 9, 1989 as a # 2 Case. We have, at our client's request, taken the January 9th date.

2. Griep v. Griep. This is a divorce case filed in 1986 which has been set before the Court for final hearing as follows: September 24, 1987 which the Court rescheduled due to Court conflict; October 14, 1987 which the Court rescheduled on

October 13th because Wayne Peterson called Wesley Gales stating Peterson would be on vacation; July 28, 1988 which was set pursuant to a conference call held between our office, Wayne Peterson and the Court on May 16, 1988 to set a #1 hearing date and the July 28th hearing was bumped when Wayne Peterson again called the Court and stated he had a conflict; September 8, 1988 which the Court bumped because it had a criminal matter which extended into the afternoon; December 12, 1988 which the court has presently set for this final hearing as a # 1 Case.

While the deputy clerk, Lori Miller, was setting up possible hearing dates with Mr. Peterson and my secretary on the Zillmer matter, Mr. Peterson stated that he was unable to make a final hearing set for December 12, 1988 on this Griep divorce. My secretary said I would not be agreeable to postponing this matter once again, but she went ahead and spoke with the two of them

regarding possible future dates, in case the Court went ahead and took it off the calendar on the 12th. Lori Miller stated she would take it off and that my secretary should get back to her on the Zillmer matter.

Meanwhile, that afternoon when this office contacted the Court to take the January date on Zillmer, my secretary spoke with Lori Miller about taking Griep off on December 12th and objected to this happening. The Court decided that it would send a letter to Mr. Peterson stating that the December 12th hearing date would stay on the calendar and that Mr. Peterson would have to bring a motion to move said date.

3. Shipyard Island Marina v. Jeff Gross. This is a matter in which I was substituted in for the Defendant, Jeff Gross, on June 16, 1988 by his request and said Substitution was filed with the Court on June 24, 1988. Said matter had already had a

Scheduling Order in effect setting discover due September 13th and trial on September 20, 1988 as a # 4 Case. The previous attorney representing the Defendant in this matter was Philip Johnson, who did no discovery whatsoever, and only answered the Complaint and attended the Scheduling Conference. With this limited time on the case, I have managed to disclose my experts within the time limits, but haven't been able to complete any discovery due to my very heavy court schedule the last two months. On September 12th, I filed a Motion for Continuance with the Court on this matter asking for an extension of the discovery deadline and the trial date because of my inability to adequately prepare for this case.

On today's date, my office contacted Lori Miller, the deputy clerk in the Judge's office and asked whether or not the trial has been put off or a motion hearing had been set. Lori stated she would call us back

after speaking with the Judge. She did call us back and stated that the Judge said "no way" to our continuance and that we were now a # 1 case.

I can only assume that women attorneys are treated one way and male attorneys are treated another. I cannot understand how Attorney Wayne Peterson can be allowed constant continuances the day before by merely a unilateral phone call without even my knowledge and yet, when I bring an actual motion for good cause, my request for continuance is not even considered.

As. Mr. Sucha is aware, I have endured this kind of situation for the last eight years under the former judge, assuming that I would pay my dues and become a part of the system. I am certainly not willing to go though another eight years with a new judge with this kind of inequity based on what I can only assume is a gender gap.

Sincerely,

/Challoner Morse McBride

CMM:sjm

Enclosures

Defendant's Exhibit
B
8-26-92

McBRIDE LAW OFFICES
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306 South Third Avenue
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(414)743-8877

CHALLONER MORSE McBRIDE
Attorney At Law

January 5, 1989

Honorable Harold V. Froehlich
Chief Judge
Outagamie County Courthouse
410 South Walnut Street
Appleton, WI 54911

RE: Continued Problems with Judge John D. Koehn

Dear Judge Froehlich:

This letter is to follow up my telephone call of January 3, 1989, and my prior letter concerning my problems dated September 15, 1988. It is also in response to your request for me to put these specific problems in writing. For ease in reference, I am going to label my paragraphs according to case,

complete with case number, so that you can follow my line of thought.

SHIPYARD ISLAND MARINA, INC. vs. JEFF GROSS,
Case No. 87-CV-286

After my letter to you of September 15, I went in for a motion hearing on my motion for continuance and I am enclosing a copy of that motion hearing transcript. I draw your attention to page 5, especially the area of my arrow, where I bring to the Court's attention the fact that I am afraid that since the opposition is represented by someone from the Pinkert firm, I am afraid that there could be a possible conflict and since I was not privy to when Shipyard Island Marina, Inc. became a Pinkert client, I didn't feel that he could continue on in the case. Thereafter Judge Koehn ruled that I could have a continuance based on the fact that my client was of the Jewish faith and that the trial date was set for a Jewish High Holiday. At that time I had filed with the

Court a copy of the enclosed Affidavit of Challoner Morse McBride as to Prejudice and Sex Discrimination and at the time of the hearing I told him that if he granted the continuance that I would withdraw my Affidavit.

After that hearing, I have had the opportunity to do further research and I have found that the Pinkert, Smith, Koehn, Weir & Jinkins Law Firm set up the corporation of Shipyard Island Marina. I am now in the process of getting those documents from the Secretary of State. I also enclose copies of mortgages, deeds, and other real estate transactions signed by James R. Smith, a partner of Judge Koehn's, all of which were drafted during Judge Koehn's tenure in the Pinkert Law Office, or at least shortly thereafter.

Therefore, I feel it is absolutely imperative for Judge Koehn to remove himself from this action and I have brought a motion

requesting him to do so, which I am also enclosing.

It is clear to me that the Judge has an absolutely impossible conflict in this case and that he cannot continue on. He has already made a ruling in the prior motion hearing of September 20 that my client owes $189.00 for not getting a continuance earlier, however, it is clear to me that that is prejudicial against my client seeing as I had brought my Affidavit of Prejudice the prior day and he should have withdrawn on September 19, thus preventing any possible costs and jeopardy to my client. I feel that his ruling and granting costs to the Plaintiff is a clear violation of his judicial ethics, seeing as he clearly was a partner in the firm when this corporation was a client.

USA FINANCIAL SERVICE vs. RANDALL LeMIEUX AND JUDITH LeMIEUX. Case No. 88-SC-57.

This is a new case about which I have

not complained previously. You will note that it was originally scheduled for Court Trial on the 2nd of February, 1989, clear back in November. On November 21st I wrote the Judge a letter stating that I would be in a criminal jury trial in Green Bay on that date and was not available. The Judge, after a telephone call from my secretary, refused to reschedule the matter and left it on the February 2 calendar. At that time I had no recourse but to bring a Motion for Continuance, which I have also enclosed. That motion for continuance was heard December 20, and I enclose a copy of that transcript. To the best of my knowledge I am the only attorney in this County that ever has to bring a motion for continuance before Judge Koehn, however I did so. At the hearing, Judge Koehn accused my office and therefore myself, of not telling the truth. It was at this hearing that he also advised me that I was going to have to farm cases

out. The facts are as follows:

The case of State vs. Kuljit Nikhanj was, as you well know, moved abut from Judge to Judge because no Green Bay Judge wished to hear it. It was finally assigned to Judge William Donovan. Sometime in early November, my office began to talk with Judge Donovan and District Attorney Zakowski in an attempt to schedule a trial date. Judge Donovan set out preliminary trial dates of January 30th, February 1st, 2nd and 3rd, for this involved trial. Although formal notices had not been sent out, my law office had been notified of this trial and it was placed on our calendar at the time when I wrote Judge Koehn my November 21st letter. It is clear from the transcript on pages 4 and 5 that Judge Koehn did not believe my November 21 letter nor the telephone call from my secretary on November 30, and apparently attempted to call the Green Bay Clerk of Courts office to ascertain whether in fact I was telling the truth as to

the calendaring or not. I am not sure why that calendaring had not filtered through to the Green Bay Courthouse, but my knowledge of visiting Judges is that they set these things up with the attorneys and worry about telling the Courthouse later. I attempted to guarantee Judge Koehn that in fact the Kuljit Nikhanj trial was scheduled for February 2nd, and he obviously chose to disbelieve me. This clearly indicates that I will never be able to go into Judge Koehn's Court and be believed, nor will I ever be able to calendar with Judge Koehn again, since he clearly doubts every word that I or my staff say. I will verify to you, Judge Froehlich, that I do not lie, nor does my staff lie. We believe in the old adage that it is easier to tell the truth because then you don't have to repeat it again. In fact, the Nikhanj trial was canceled. It was canceled at the insistence of both District Attorney Zakowski and myself. He, because he wanted to set the

inquest of the Pulaski car deaths, and I, because I wished to attend the State Bar Convention. (In fact, I have been told that I am going to be a member of the Lawyer Referral Committee and that meetings are held during the Bar Convention, therefore, it is necessary that I go to the State Bar.)

This case clearly places me in the position of being disbelieved by this Court, a position I find untenable.

DELLISE vs. DELLISE, Case No. 88-FA-118

This matter was a Petition for a Temporary Restraining Order which we took to Judge Koehn for his signature and which, per my secretary's Memo to the File, the Judge refused to sign. We thereafter took the Petition to the Family Court Commissioner who signed the Petition and the Temporary Restraining Order and eventually granted us and in injunction.

As you can see, the facts in this

particular request for TRO were particularly egregious and Judge Koehn refused to sign it because there was a divorce already filed and because it was in another County and was another Judge's case. After this experience, in talking with Courthouse personnel, I became aware that Judge Koehn had a policy never to sign a TRO when there was a divorce involved.

OVERBECK vs. OVERBECK, Case No. 88-FA-134

I again had a client who had need of an immediate Temporary Restraining Order. Mrs. Overbeck had come to me sometime in early summer looking at the possibilities of divorce, and at that time she did not mention violence. She did not return to my office until sometime in mid-summer and at that time she still did not authorize me to file a divorce. However, in late November she came in and disclosed to me that she had been beaten and that she was not yet ready to file

a divorce, but wished to have her husband removed from her house. I enclose an Affidavit of my secretary, Julie Sullivan, outlining her contact with Judge Koehn concerning my request to have the enclosed Petition for Temporary Restraining Order and Restraining Order signed. He did, in fact, sign that TRO but warned me that it would be dissolved as soon as a divorce was filed.

I enclose a transcript of the proceedings held on December 1, 1988. As you can see there is not doubt but that in injunctions was required and fact was granted. I particularly call your attention to pages 37 through 40, where the Judge grants the injunction but tells me again that it would be dissolved the minute any divorce papers are filed. I told him that I was afraid that I was going to have a further abused wife and he still refused to do anything but dissolve the injunction the minute the divorce was filed. The Judge told

me that if she was beaten she could charge him with a crime and I tried to explain that Wis. Stat. 813's purpose was to prevent such things and to assist a wife who normally did not feel that she could charge her husband with assault and battery. He merely responded that he was not going to put anyone in the position where the slightest comment might subject him to going to jail. That although the law allowed such an injunction, he wasn't going to do it.

Approximately 40 percent of my practice consists of family law, and in a great portion of the divorces I file there is domestic abuse. In prior years with Judge Stephan, when I had an egregious case I had no problem obtaining the appropriate TRO and Injunction from Judge Stephan. If Judge Koehn is not going to follow the law and grant such TRO's and Injunctions, or if he is going to dissolve them the minute a divorce is filed, he clearly places all women in Door

County in jeopardy of being killed or abused when they file a divorce, and he clearly jeopardizes my ability to practice good law and earn a living.

At one point I contemplated bringing a Writ of Mandamus against Judge Koehn to force him to sign the Dellise papers or to force him to issue a 2-year injunction, and I find that such action is a waste of my time, energy and my client's attorney dollars. It should not have to happen.

DAUBNER vs. RIDGELY TAVERN, INC., Case No. 88-CV-151

This is an action that I filed against the Ridgely Tavern for the personal injury and in fact, death of Robert Daubner, on behalf of his widow, Mary Ann Daubner. I enclose a copy of the Complaint, Answer, and eventually the oral arguments concerning Mr. Kaftan's motion to dismiss. My position all the way through arguments as you can tract to the transcript, was that perhaps I had not

artfully drafted my Complaint, but that, as the Affidavit clearly sets out and as the Amended Complaint clearly sets out, I had a cause of action because of the behavior of Lyle Sconzert. The Judge allowed me to re-plead this matter within 2 weeks, which I did. Nevertheless, he still awarded full costs against me in the amount of $413.00. It was only because I did not allow Attorney Kaftan to slip it through that I even saved paragraph 20, which as you can well see in the oral arguments, was never mentioned by the Judge.

I think the finding of frivolous is a very unusual circumstance and in this particular case where paragraph 16 clearly sets out that Mr. Sconzert's undue pressure and continued harassment caused the death of my client. I think under our newest pleading, I had ample material in the complaint to withstand this motion, especially since the Judge allowed me to re-

plead it within 2 weeks. I am certain that there has not been one other granting of frivolous costs in Judge Koehn's Court outside of this one.

COUNTY OF DOOR vs. ANIMAL WELFARE ASSOCIATION OF DOOR COUNTY, Case No. 88-CV-312

This case was the straw that broke the camel's back. I was out of my office for a vacation between Christmas and New Years to be with my five sons and when I came back, I was advised by my staff that we got a phone call from Betty Marshall who runs Animal Welfare after she read the Door County Advocate article wondering what had happened. When my secretary investigated she found that apparently the Court went forward with the default hearing on December 28th although my December 19 letter was in the file as well as my request to file a late answer and my Motion to Dismiss or in the alternative Answer and Affirmative Defenses. I have ordered the transcript for these hearings, as

I understand that it took Mr. Costello some time to get witnesses which the Judge required before he would give a default judgement. I am also in the process of getting a copy of the Order or Injunction which the Corporation Counsel's office assured me was to be signed yesterday or today.

When this matter was originally filed, my clients and I felt that we had a number of defenses but that the answer was very complicated and we also though that there was a possibility that we could negotiate with the Corporation Counsel. Because of that, I called Dennis Costello and he told me that I could have as long as I needed to file the answer. I did receive back from him his October 31st letter giving me another 20 days. However, since my client wasn't served until October 17, I felt that I had until at least November 6, and because we were still negotiating and the Corporation Counsel did

not indicate to me that there was any urgency in this matter, that my answer would be timely. I was very surprised on December 19 when I received a Notice of Application for Default Judgement and I called Mr. Costello and asked him why he had filed that when we had an agreement that I had an extension, and he had no particular answer for me. I immediately, when I saw that the hearing was to be held during my vacation, wrote the Judge my December 19 letter and asked for a rescheduling because I was on vacation which he already knew in several other matters, and I also immediately filed my Request to File Late Answer and Motion to Dismiss, etc. Nevertheless, Judge Koehn went forward and granted an Injunction of some sort and held a hearing when he was well aware that I was not available. I had checked with Mr. Costello and he had no problems rescheduling the default hearing. Especially since I had filed the Answer and the law abhors a

default, I could not fathom any Judge going forward, but Judge Koehn did.

There are other problems that you are probably aware of between myself and Judge Koehn, one being the fact that I sued on behalf of my client, Thomas Noll, his brother, Charles R. Koehn, a case with which you are intimately familiar. After that trial was over, Judge Koehn did remark to me that his brother would get even with me, a remark that I dismissed at the time.

Further, Judge Koehn is well aware that I supported Sven V. Kirkegaard during the Primary Election and Peter C. Diltz during the Final Election.

As a final problem concerning Judge Koehn sitting on any matters in which the Pinkert firm is involved, I would point out to the Court that I believe that the entire firm, including Judge Koehn, is presently being sued in Federal Court for fraud and misrepresentation in a matter involving the

Hutter Foundation and the Emily Stewart Foundation. I think that for him to continue to sit on cases in which any of the Pinkert lawyers are involved when he is still inexorably bound up in matters with that firm, such as being sued, is most improper.

Because the Gross matter is coming on for hearing rather quickly, I have filed in individual motion asking Judge Koehn to remove himself (as I have enclosed). However, I am in the process of drafting a motion to remove Judge Koehn from all cases in which I am involved. I enclose a rough draft of that motion, although I have not yet filed it in any cases.

It is apparent to me that for whatever reason, Judge John D. Koehn has decided to put me out of the practice of law in Door County, Wisconsin. I don't ever recall having done anything to incur his wrath outside of the incident with his brother, but I believe that it is a Judge's position to

rise above things such as that. I have had to spend somewhere between $300-$500 in this last month or so purchasing the transcripts which I have sent to you and uncounted unbillable hours in reviewing this material and putting it together in a file and in drafting this letter. Additionally, there is the mental aguish and the mental torment of having to go through such a situation such as this. I am not sure what you can do to remedy this situation. I would appreciate any help that you can give me. It is clear to me that at some point I am going to have to take this entire matter to the Judicial Commission. I have been loathe to do so and in fact have been loathe to report the situation to you, but it is clear that it cannot continue in this fashion. My clients deserve an impartial judiciary just as all other attorney's clients do, and I don't believe I can get that for them from Judge John D. Koehn.

Sincerely,

s/ Challoner Morse McBride

CMM:btr

Enclosures

Defendant's Exhibit
C
8-26-92

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(414)743-8877

CHALLONER MORSE McBRIDE Fax (414)743-6299
Attorney At Law

August 31, 1989

Wisconsin Judicial Commission
Room 606
110 East Main Street
Madison, WI 53703

Attention: Ms. Elana Capella

RE: Complaint Against Judge John D. Koehn,
Door County Circuit Judge

Dear Ms. Capella:

I am requesting that the Judicial Commission for the State of Wisconsin Investigate John D. Koehn, Door County Circuit Judge.

The Honorable John D. Koehn was appointed to the Circuit Court on or about April 1988, and was elected during November,

1987.

I moved to Door County in September of 1979 after having accepted a position with Attorney James O. Ebbeson. I left Mr. Ebbeson in mid-Summer of 1980 and opened an office as a solo practitioner. My practice is divided into about four parts, as follows:

a) Family Law- 40 percent. Of that 40%, about 15% is battered women referred to my office by various help groups in Door County. About 20% is Family practice and about 5% is Pro Bono.

b) Criminal Law - mostly felonies as assigned by the State Public Defender. About 5% of the above 15% is Public Defender and private appellate work.

c) Personal Injury - 30 percent. Automobile, worker's compensation, and social security.

d) The remaining 15% is real estate work and other miscellaneous work.

It should be noted that in my 10 years of Door County practice I have never been assigned a Guardian ad Litem case, a Court-appointed Guardian, or any other type of case out of the Door County Circuit Court. This

is true for both Judge Edwin C. Stephan and Judge John D. Koehn.

For most of my 10 years, Judge Edwin C. Stephan was the Judge (September, 1979 to April, 1988), and I understand how hard it is for a long-tenured Judge to accept women as attorneys. In the early days, I remember a couple of older reserve Judges looked at me and very courteously told me that they would have to have the attorney present, not the secretary. I understood Judge Stephan's narrow view of my abilities, and I was willing to pay my dues. I have done so for 10 years, but not any more! Judge Koehn and I are peers and I expect that attitude in Court. I no longer have to be treated as a second-class attorney.

The real damage in this continuing saga is to my clients. In the last 3 years to the present time, I have been forced to refer new clients to other firms because I was positive they would lose if I represented them.

Both Edwin C. Stephan and John D. Koehn originally come form the Pinkert, Smith, Koehn & Weir Firm. This firm is today the Pinkert, Smith, Weir, Jinkins & Nesbitt Firm (plus a new young attorney). This has meant a bias toward that firm since I have been in Sturgeon Bay. It has impacted negatively on my clients and on my practice. The one case that comes very vividly to mind involved Russell Brown, and attorney from Minneapolis. His firm represented Land of Lakes, the corporate center being in Minnesota. This particular case was an action filed by Butler Beverage against Lake to Lake, a subsidiary of Land of Lakes. Attorney Brown and one of his partners flew to Sturgeon Bay and tried to engage me. My association and friendship with Attorney Brown goes back to our high school years, some 30 years. Attorney Brown and this partner wanted my office to be the local counsel, which would have paid my office between $5,000 and $10,000. I had to

turn him down because Judge Stephan was the Judge, and I knew Land of Lakes would not get fair treatment if I represented them. I referred this action to the Pinkert firm. I felt it was a shame to have to tell a very close friend that he needed another firm to represent Land of Lakes in order to get fair treatment in court, but I felt it was necessary because of our friendship.

Why my clients are not treated fairly, I can only guess. Probably at least partially because I am a woman. It is clear to me that women attorneys and their clients are not treated the same as male attorneys in this Court. We have four women in the Door County Bar -- Colleen Cotè, Trudy Toft, Linda O'Brien and myself. Colleen Cotè left the practice of Law because of Judge Koehn's treatment and attitude towards her. Trudy Toft is in her father's firm and does very little court work, and Linda O'Brien was formerly with the Pinkert Firm, although I

think she is no longer practicing law, and then there is me. I have a large practice and it could be even better if my clients and I were treated evenly by Judge Koehn.

I could substitute Judge Koehn. I did this to Judge Stephan about five years ago and it only made the Brown and Kewaunee County Judges angry having to come to Door County all the time. Judge Stephan and I finally worked out our differences, so long as the Pinkert firm was not involved.

About three year ago a Brown County (Green Bay) law firm asked me to take a Personal Injury case against a Brown County attorney. The attorney I sued was Charles R. Koehn, Judge John D. Koehn's brother. See Exhibit 1. At the time I did not even think about then-Attorney John D. Koehn and any reaction he might have. The case went to the Jury and they found for neither party. But later, then-Attorney John D. Koehn sought me out at the Courthouse and warned me that his

brother would not rest until he got even. I though he meant Charles R. Koehn, not Judge John D. Koehn.

Judge Koehn had done considerable will and estate work in his practice prior to becoming Judge. I had two cases that challenged Wills that had been written by Judge John D. Koehn while he was at Pinkert, Smith, Koehn, Weir & Jinkins. In the Estate of David, I represented the husband in a case where his wife was murdered by one of her several sons. John D. Koehn wrote a pre-nuptial agreement and will giving everything to the sons. In Estate of Yaccino, John D. Koehn wrote a will of an elderly man giving his entire estate to friends (third-parties) and not to his sister or nieces or nephews. Prior to filing suit, Yaccino's treating physician said he lacked the requisite testamentary intent to draft a will. According to my clients, as told me after trial, the Judge sitting on the Yaccino case

went down to Judge Koehn's chambers during several of the breaks during the trial. I had to call Judge John D. Koehn as a witness in both cases. Both wills were upheld.

It did not take long for me to find out that I was going to be Judge John D. Koehn's Whipping "girl." The real problem was that he took over Judge Edwin C. Stephan's caseload and I had no substitution privileges. At one point I even filed an affidavit of prejudice and sexual harassment and sexual discrimination. See Exhibit 13, Gross v. Shipyard Island Marina, Affidavit of Challoner Morse McBride, September 19, 1988. The judge refused to recuse himself.

In my ten years in Door County, I am not sure that I ever was awarded costs and/or fees when I won a motion hearing. But I always paid costs if I lost.

I will probably survive this situation. The big loser will be the lay public and my clients. My clients expect fairness and they

are entitled to it. When I have to tell them it is not always possible, they are hard put to understand or believe it. The clients and justice are the losers, not just Challoner Morse McBride.

If this were just a quiet fight between Judge Koehn and myself I could handle it, but it is not. The Door County and Kewaunee County Bar know about it as well as the Court practitioners in Brown County. I am like a lame duck on a pond. They file motion after motion and I lose and pays costs. I feel this is beginning to affect my practice. Judge John D. Koehn told me in chambers that there should be no more solo practitioners because they foul up the Court's calendar. See Exhibit 13, Note of Challoner Morse McBride.

I am the only attorney in the Bar that has to get written permission for a continuance. If a male attorney requests a continuance, he gets it by phone, and I am

not informed until I get to the Court room.

I am also ordered to prepare my case, whether I am a #2 or a #4. I must check with the court at 2 p.m. the day before the trial date to see if my case is a #1. It is very difficult to bring in experts and lay witnesses in less than 3 hours.

I first took the situation to the Honorable Harold V. Froehlich, Chief Judge of the Eighth Judicial District. I though I should go through the chain of command. The letter to him and his response are attached as Exhibit 2.

I am attaching some of the worst case scenarios for you to review, although they may or may not be in chronological order, and they certainly are not <u>all</u> the problems.

1. One of the tools that has been a life-saver to abused women in Door County is the Temporary Restraining Order (TRO) in marital cases and I have used it many times. For me, the rules have now been changed.

Judge John D. Koehn dissolves my TRO's when the divorce is filed, however, when I represent the man, he continues the TRO for the women until Peter C. Diltz, the Family Court Commissioner, has an order in place. See Overbeck and Hollister, attached as Exhibits 3A and 3B.

2. Barney v. Williams. This is a small claims case. My client, the Defendant, is in the Air Force. I was retained on July 7, 1988. My client then reported for Duty on July 27th. I had no prior knowledge of this before July 7, 1988. I had written my client and asked when he would return home. Eventually, the Judge gave me a date for which my client had to take leave. Exhibit 4.

3. Buechner v. Buechner is another example of the Double Standard imposed on me as opposed to male attorneys. Attorney Brooks and I were stipulating this divorce so that we could be heard before Peter C. Diltz,

Door County Family Court Commissioner at Final hearing. I had discussed this with Attorney Brooks and he agreed to get the trial date postponed. When I got back from the other Court, I was told that Judge Koehn had assessed costs against me and the Judge had the hearing without me. Attorney Brooks had previously canceled a final hearing on this very matter on the morning of the trial and had not been assessed costs. Exhibit 5.

4. As I said in the first part of this complaint, about 40% of my practice is Family Law. In Overbeck v. Overbeck, I filed a Petition for a Temporary Restraining Order against the husband, It will be necessary to read the complete transcript, but I particularly point to the Transcript page 37, 38, 39 and 40. We have a husband that openly admits physical abuse to his wife and a Judge that will only grant the TRO until the divorce is filed. It is clear that Judge Koehn feels that a Man's Castle is his Home.

It is clear that Judge Koehn feels that he does not have to follow the law. See Exhibit 3A.

5. On November 11, 1988 USA Financial v. Randy & Judith LeMieux, Exhibit 6, was set by the Court as a #2 at 9:00 a.m. for February 2, 1989, in the Door County Circuit Court. On November 21, 1988, I wrote the court asking for a continuance because I would be defending Kuljit Nikhanj in an attempted murder charge wherein my client is alleged to have attempted to blow up a Green Bay attorney.

On December 1, 1988, the Scheduling Clerk, Lori Miller, wrote me saying that Judge John D. Koehn would not grant me a continuance on LeMieux. LeMieux was still a #2 on February 2, 1989 at 9:30 a.m. On December 2, 1988, I filed a formal Notice of Motion and Motion for Continuance for the LeMieux hearing. On December 8, 1988, I received a notice for the continuance hearing

as a # 1 on December 20, 1988, at 10:00 a.m. Only my client and myself appeared at this motion hearing and the Judge granted my continuance. Before the Judge left the bench, he made a very serious charge concerning my office staff, my calendar and my practice. See pages 4, 5, and 6 of the Court record.

I have some problem with the Judge telling me to reduce my workload. I fulfill my responsibilities to my clients. Most of the Sturgeon Bay trial attorneys have found it quite useful to check dates with each other prior to asking the Court for a date. The Court refuses to do this. What really upsets me is the Judge's unfounded attack of my office staff. On page 4 of the LeMieux transcript he accused my staff of lying to the Court and this is <u>not</u> <u>true</u>. Judge John D. Koehn stated from the bench and on the record that there was no truth about the Kuljit Nikhanj trial being set for February

1, 2 and 3, 1989. I do not know who did Judge Koehn's investigating of the Nikhanj trial, but they gave him bad advice on this file and in a later file that I will attach.

My secretary has written the events of the Kuljit Nikhanj pre-trial schedule in a memo. I was the third attorney appointed by the Public Defender's office to represent the Defendant. To the best of my memory, by the time I was allowed to withdraw, the case had been before at least 5 Judges and it probably is true that the Brown County Clerk of Court did not show this trial on her calendar. By the time we were able to get a trial date from Judge Donovan, a Judge from Marinette, Wisconsin, Kuljit Nikhanj had asked that I be terminated and he was gong to defend himself Pro Se. See the Memo of BTR dated 7789. Exhibit 7. I should not have to defend my staff. Judge Koehn's charges are heinous and totally without merit.

My full-time office staff is as follows:

1) Elizabeth Tice Rockendorf, age 27, has been with me for 10 years.

2) Sherri Miller, age 27, has been with me 5 years, and she formerly worked for Attorney Eric Stearn.

3) Julie Sullivan, age 18, has been with me one year.

4) My husband, Ron McBride, age 52, has been with me for 16 years. Over the years we have formulated an office procedure that I am sure conforms with the Wisconsin Bar and American Bar Rules. Each secretary has her own area of our work and my husband is available to discuss the mechanics of this office procedure.

We publish an office manual and furnish a copy to each employee. In the ten years of my practice in Door County, I have only had 5 secretaries -- one quit to get married and work in Chicago and the other one quit to stay home with children. When calendaring with the Judge's office, my staff NEVER makes

up stories. We don't have to -- I simply have a busy calendar. The Judge has every right to chastise me from the Bench if I have done something wrong, he has no right to accuse my staff of lying.

7. Dellise v. Dellise is a divorce file. Judge John D. Koehn refused to sign a Temporary Restraining Order after reading my client's statement of October 24, 2988. It took me until 10/28/88 to have my Motion for Temporary Restraining Order heard by Peter C. Diltz, Family Court Commissioner for Door County. My secretary's Memo to the file again emphasizes the Judge's attitude toward women. Exhibit 8.

8. County of Door v. Animal Welfare Association of Door County, Inc. is a zoning matter. Exhibit 9. This confrontation has been going on for some time. It started when the Town Board of Sevastapol passed an ordinance restricting the number of dogs a person could have in the Township. My

client, Betty Marshall, started the animal shelter a long time ago. She operates by donation for the placement of dogs and cats.

Animal Welfare sued the County and all townships in the county for fees for collecting their strays. This matter was finally resolved by Judge N. Patrick Crooks sitting as the Door County Circuit Judge. Judge Crooks ruled that Animal Welfare Association of Door County was entitled to recover fees every two years by statute. The parties eventually stipulated to dismiss the matter if the governmental institutions would support the work of Animal Welfare. They, the Townships of Door County, have not paid an the Town Marshals and Deputy Sheriff's still send dogs to Animal Welfare Association of Door County and Mrs. Marshall still take them. The case at bar was started by the Town of Jacksonport and the Door County Planning Commission. Mrs. Marshall and the Animal Welfare Association of Door County

were gifted a large farm on County Trunk "A" in the Town of Jacksonport. Somebody found out about the gift and its intended use and the war began. Mrs. Marshall and David Barney made application for a variance, pro se. I was not retained until 10/19/88 when my clients were served by Sheriff.

I called the Corporation Counsel, Dennis Costello, and we were discussing some type of compromise to let my client request another hearing before the County Planning Commission. We negotiated but were unable to settle. On December 19, 1988, I received notice of the default hearing and I immediately wrote the Judge for a continuance because I would be on vacation at the time of the hearing. My winter vacation is some days before Christmas until after the New Year. This is the time that my three sisters and all of the cousins (including my 5 sons) get together. I am attaching my last five year's calendars showing where my winter vacation

falls over the Christmas period. Exhibit 9. The Court was well aware of the fact that I always took vacation at this time because I wrote many letters on many files stating that I would not be available at that time. On December 19, 1988. I wrote the Judge, my client and Dennis Costello and asked that the hearing be held any time in January when I was in the County. I had checked this out first with Attorney Costello and had gotten his approval. On December 20, 1988, I filed a request to file a late answer, a Motion to Dismiss, and in the alternative and Answer and Affirmative Defenses. The Corporation Counsel and I continued to discuss this matter and he assured me that he would not default me. Mr. Costello's statement to the Judge on page 5-6 of the Transcript, line 19, does not reflect what we had agreed upon. I submit that Costello believed that the Default hearing was off. He appeared in the Courtroom without any witnesses and when the

Judge told him he wanted to hear testimony, Mr. Costello spent the next 30-60 minutes finding someone to testify. The fact that no witnesses showed up makes one question Mr. Costello's word.

After Mr. Costello found David Sautebin, some testimony was taken and the Judge gave the County a Default Judgement. I would never have believed that I couldn't take Mr. Costello's word. Noting would have been lost had they waited another week for my vacation to end.

In a file I will discuss next, Stephanie Bailey-Britton v. Strahl, my case was dismissed because Judge Koehn did not like my affidavits, however in this case, Animal Welfare Association of Door County, the Judge accepted affidavits containing the same language that I used in the Bailey-Britton file. I can only assume that there is one set of standards for the male attorneys and one for the woman lawyers.

When my office staff was contacted by Betty Marshall, they checked with the clerks office and were told about the Default. One of the Deputy Clerks (Mary) told them that the Answers were in the Court file! Attached is the file note.

Up until now most of these jabs had been at me, a few hurt my clients, but now it became apparent that the Judge wanted me out of "his Court." I am attaching the newspaper reports of the action. This action by the Judge was clearly meant to hurt my practice. I filed a Motion to Set Aside the Default. That, too, was denied.

9. In Daubner vs. Ridgely, Exhibit 11, I represented the Plaintiff for herself and as surviving spouse to Robert Daubner. On October 19, 1988, a motion hearing was to be heard on Defendant's partial motion to dismiss Plaintiff's complaint. Mr. Kaftan filed no motion or notice of motion with the Court or my office. I did receive a copy of

a Brief to support his argument for frivolous costs. I made the argument that Defendant's motion had never been filed, as such, therefore it was never properly before the Court. In the Gross case, below, the Judge would not even hear my Motion for Continuance because i had filed no Notice of Motion. Here, Mr. Kaftan didn't even file a motion, yet he was heard and his motion was granted.

Mr. Kaftan wanted my second cause of action to be dismissed upon its face. If our complaint were as he perceived it, it may be that, based on a case he tried and lost, that the Court should dismiss my action. However, this was not my theory in this case. If you read my brief on this matter, I was going down a different street. My theory had nothing to do with the insurance company not paying. I expect to prove that the claims agent, by his actions and harassment caused the Plaintiff's deceased husband to shoot himself. My theory in this case is well

documented in case law. On page 21 of the transcript I believe that my view of this action is correct and should be heard by its fact finders.

In this case, Mr. Kaftan is allowed to not follow civil procedure and I am held to the 4 corners of my Complaint. The outcome was that I was ordered to pay actual costs and replead. It is quite obvious that I am held to a different standard than most other people.

10. In Stephanie Bailey-Britton v. Strahl, I represented the Plaintiff and the Defendant was Pro Se. This is the case that I alluded to in paragraph 8. This case and the following are the most grievous because my clients not only lost by the Judge's new rules, but the loss cost them several thousands of dollars. Stephanie Bailey-Britton called my offices to secure my services. She and her sister were residing in Arizona and they asked me to engage a

reputable real estate firm to put their Beach Road house on the market. They had Real Estate Brokers list it, but they asked me to find someone that could sell it. After reviewing my Title & Abstract records, I suggested Wilson-Shaffer of Ephraim. They had sold a good deal of Ephraim and Sister Bay real estate recently. I called the Wilson-Shaffer broker, Kathy Barnett, and told her of the request of Stephanie Bailey-Britton and her sister. I asked that she contact them. At this point there was nothing else to do from my standpoint.

To the best of my knowledge, the Realtors and the Sellers made contact and a Listing Agreement was signed. I did not hear anything until both the Realtor and Seller called me with a problem. It seemed that the surveyor found 3 of the 4 existing buildings encroaching on the property to the North. This property was owned by Donald Strahl of Milwaukee.

I do not know Mr. Strahl. He had called the office several times trying to get my office to intercede for him in the purchase of the Bailey-Britton property. Each time I referred him to the Realtor. In fact, he had been trying to by this property for some time from the owners but at a price far below its market value. Had we all known what was going to happen in the next few months, we would have made money by selling to Mr. Strahl.

By this time we had a Buyer, 3 attorneys, one Realtor and the Sellers involved, plus the owner to the South of the property who had bought a strip of land from the Sellers to put in a direct access road, but our clients failed to ask him for an easement on this road so the only access to the Bailey-Britton property was a 3/4 of a mile grass and gavel easement that started about 6 properties north and ran to Mr. Strahl's property. Somewhere in the selling

and passing of Deeds to this property, the easement to the Bailey-Britton property had disappeared.

The saving factor in this mess was that Strahl had owned his property for abut 30 years and the Bailey-Britton property had been in the family about 60 years. In other words, we had adverse possession of the ground under 2 of the large buildings and the only building left was a small metal building to put lawn equipment in, which could be moved.

The buyers, of course, wanted the mess cleaned up, as did the lending Savings and Loan. The buyer's attorney was doing her best to reassure the buyers that this was a problem that could be cleaned up. The Boat house/guest house were encroaching the same amount - the metal shed could be moved with little effort. This house had been on the market for about 4 years so it was most imperative that we hold on to the Buyers.

I contacted Mr. Strahl in an effort to buy about 6 feet - he said no. I then filed a quiet title action in Door County Circuit Court. It took about 3 weeks to get service on Mr. Strahl. He had boarded up all his windows and unplugged his phone. Finally our process server caught him sneaking out of the house one morning about 6:a.m. I then sent Mr. Strahl a set of Admissions. Mr. Strahl answered the Complaint in layman's language and it was accepted by the Court as an Answer. He also answered the Admissions. I asked for a Summary Judgment date and the case was set for January 14, 1989. I filed several Affidavits and the Admissions along with my motion.

At the Summary Judgement Motion Hearing, Mr. Strahl admitted that the boat house and the practice house had been there far in excess of 30 years. I also tendered another affidavit from Christine Bridenhagen, Nee Peterson, who had lived about 2 properties

north of the Bailey-Britton/Donald Strahl property and she stated that the 2 buildings had been there for in excess of 20 years.

Instead, Judge Koehn refused to grant summary judgment on the basis that the Affidavits did not conform to his standards. I offered to prepare another Affidavit and have it back in 5 minutes. I pointed to the Admissions of the Defendant. He denied my motion.

My affidavit and its wording were the same as the Affidavit filed by Corporation Counsel Dennis Costello in the Animal Shelter case that Judge Koehn granted the Default Judgement to Door County in December of 1988 while I was on vacation.

On Mr. Strahl's Admission and statements in court alone, my clients were entitled to a Summary Judgement!

Because it would have costs my client more to re-file the Summary Judgement, and in the interest of preserving the sale, my

clients paid Mr. Strahl $2,000.00 to purchase about 6 feet of land. They paid my office an additional $5,000.00 to obtain proper easements for the roadway into the property and for the enormous amount of legal work to satisfy the lender. The attorney for the lender was James Smith, the Judge's ex-partner. The property had to be resurveyed and a new description made. My client had to agree to rent the property to the Buyer for a $1.00 a month to hold them. Bailey-Britton had to pay the Interest difference to the lender because they had a 60-day commitment and the interest rates went up after 60 days. Because of Judge John Koehn's action, my clients paid approximately $10,000 to $11,000 more than they should have. Exhibit 12.

11. In Shipyard Island Marina v. Jeff Gross, d/b/a ARC, Exhibit 13, I represented Jeff Gross. On or about June 24, 1988 I was contacted by Mr. Gross. He asked if I would represent him in this action. Prior to that

date, he had been represented by Attorney Philip Johnson of Johnson, Herlache, Johnson & Johnson. I told Mr. Gross that Phil Johnson was a fine attorney and I couldn't understand why he wanted to substitute him. Mr. Gross stated that Attorney Johnson had done nothing for him.

I told Mr. Gross that I would get back to him after I talked to Phil Johnson. Phil told me that Mr. Gross was hard to deal with and he would appreciate me continuing the case and that he would get the file down to me. Attorney Johnson also told me there was s Motion for Summary Judgement set in a few days. I told him that since he knew the facts far better than I, he should attend the Summary Judgment. He did, and kept the case in Court. I called Mr. Gross, who is the Good Year Tire Dealer in Skokie, Illinois, and told him we had withstood the Summary Judgement. He asked that I represent him in this matter to a conclusion. Attorney Phil

Johnson had done no discovery. Except for the Plaintiff in this matter, all of those Defendants experts were in Chicago or Southern Illinois. I contacted the people and was trying to arrange depositions but this was the peak of boat preparation and I ran into a lot of resistance.

The trial was set for September 20, 1988. It was set as a #4 until September 12, when it got moved up. At that time, I filed a Motion for Continuance. I served and Affidavit of Prejudice on the Judge on September 19, 1988 and had a conference with him and Attorney Nesbitt, at which time the Judge criticized me for filing no Notice of Motion. When I called my client on September 19, 1988 to tell him the trial was going, he stated that he is an Orthodox Jew and September 20-21 are the Holiest of Holy Days in the Jewish Faith.

I presented this fact to the Judge at the Motion on September 20, 1988, and he

continued the case, ordering my client to pay approximately $189 in costs and he set a new trial date for January 10, 1989. I had also filed an Affidavit of Prejudice asking the Judge that he recuse himself for several reasons, and he side-stepped that issue. When I told my client that the Judge would not recuse himself in the matter, even though he had had personal contact with the Plaintiffs, Mr. Gross told me to do the best I could. He didn't want to be an in-person spectator to what he knew was going to happen. He said he lived in Chicago and he knew what was going to happen.

The matter was then set for January 10, 1989. On January 4, 1989, I filed a Notice of Motion and Motion to Disqualify the Judge. That hearing was held prior to trial. The Judge said he would get off the case if he had any involvement with the Plaintiff. He had had a one hour Will conference with them, but still would not get off. I also

presented the Judge with corporate and real estate records of the Pinkert Firm's contacts with the Munaos.

Of course, Shipyard Island Marina won and during the trial, Judge John D. Koehn made a statement on the record that he had checked and there were no Jewish Holidays indicated on or about September 20, 1988. I submitted and affidavit from Rabbi Sidney Vinburg of the Congregation Onessa Israel stating that September 20-21, 1988, were the highest of Holy Days in the Jewish Faith.

12. The last case that I am going to discuss is Pichette v. Neuville. I have been the family attorney for the Pichette family since about 1979. In 1982, Rosy Pichette came in to the office about her son, Thomas Pichette, being injured by a Bull. I went over the documents she had and suggested that she look for another law firm and that I would help her do that. I had to turn her down because I was involved in two other

personal injury cases with an enormous amount of money involved and did not have the resources to fund the Pichette loss -- I know it would take between $3000.00 and $5000.00 just to prepare it for trial. We talked about the progress of the investigation from time to time when I did other law work for her. She had hired the law firm of Mouw & Celello and it certainly seemed to me that they were doing an excellent job.

Some time around 1987 her husband died and we handled the probate. About a year ago, Mouw & Celello decided to pull out of the case for Tom Pichette. Proof of liability had always been a major problem since no one other than the Bull and/or Cows and Tom knew what really happened and Tom is totally disabled and has retrograde amnesia. We were able to prove that Mrs. Neuville's 13 cattle (cows and bull) had broken the fence between the two farms and were running wild on the Pichette farm for two weeks prior to

the accident.

On the day of the accident Tom and his younger brother, Patrick, were taking turns riding a miniature motorcycle. The motorcycle had a top speed of about 40 mph and a maximum weight limit of about 120. Tom weighed 140 pounds so the top speed of the motorcycle would have been reduced to somewhere around 35 mph. This accident happened on a somewhat grassy field. The best guess is that Tom got too close to the cows and the bull charged him. Patrick heard the animals snort or beller at the same time the motorcycle revved. Further, he saw the cattle leaving the scene of the accident.

The Defendant had asked Dr. Wright, a local Vet, to round up the cows. He was unable to do it because they had turned wild. The Defendant then hired Mr. Hembel to come and sedate them. He got several sedated by shooting them with a bow and tranquilizer arrows.

While the cows were on the Pichette property, they trampled the family vegetable garden. This was a much-needed garden so they could eat during the winter. This is a reasonably poor family. The cows also attacked their car and truck, doing great damage to them.

In October of 1987, I agreed to take on the case. I had enough reserved to fund the rest of the discovery. I knew and had explained to my client that liability was still a major problem and that there was a chance we could lose.

About 2 weeks prior to the trial, the pre-trial was held with Judge Koehn presiding. It was at about this time I found out that Attorney Pinkert was representing Mrs. Neuville for the overage. She only had $100,000.00 in farm liability coverage, so her insurance carrier, State Farm, had advised her that she should hire private counsel.

I immediately asked the Judge to recuse himself or ask Mr. Pinkert to refer the case out. I said that I did not feel comfortable with Judge John Koehn hearing this action with Mr. Pinkert representing the Defendant. The Judge refused to recuse himself and stated that the Defendant had the right to choose the counsel of her choice. We then discussed the matter of jury instructions. I proffered 5 to 7 Jury Instructions having to do with cattle causing damage. Later, at the Instruction Conference, the Judge refused to let any of them in. Only Mr. Pinkert's and Mr. Deadman's (attorney for State Farm) Instructions were allowed in. Exhibit 14.

During the pre-trial, after I had objected to Mr. Pinkert representing Mrs. Neuville, the Judge for some reason blurted out that he did admit that he was still collecting money on a monthly basis from Pinkert, Smith, Weir, Jinkins & Nesbitt on

an old Land Contract (Exhibit 15) and that he was a Party Defendant in a Federal RICO lawsuit, a copy of the Complaint is attached. Exhibit 16.

The trail started on Tuesday, August 1, 1989. Plaintiff's part went through Thursday morning and Defendant called only two witnesses, the Defendant and a Deputy Sheriff. On Thursday afternoon we did closing arguments and jury instructions. Thursday evening, after Court closed, Rosy asked me why I was not at the Lawyer's meeting right after lunch on Wednesday or Thursday. I told her that I didn't know there was a meeting. She told me that the Judge, Mr. Pinkert and Mr. Deadman were standing at the counter in the Judge's outer office having a meeting. Rosy said the outer door to this office was open 18" or so and she could hear part of what they were saying. The attorneys were saying, "Object to the truck, object to the car," and were

whispering with the Judge. After reviewing my trial notes, it became clear to me that nothing about the cattle and the car or truck came into evidence after this conference. The next morning, I waited until the Jury was in the jury room and I asked the Judge if I could put one more thing in the record and he agreed. I then explained part of what my client had told me and I put her back on the stand under oath and she told them exactly what she had told me. Mr Pinkert was not in court this day, but Mr. Deadman stood up and confirmed that the three of them had been talking [in] the outer office but that it was about an old trial they all had been in. When the jury returned its verdict it was as follows:

> Question 1: At and just before the accident was Esther Neuville negligent?
>
> Answer Yes
>
> Question 2: If you have answered Question 1 "yes," then answer this question: Was such negligence a cause of the injuries to Thomas Pichette, Jr.?

Answer No

Question 3: At and just before the accident was Thomas Pichette, Jr., negligent?

Answer No

Question 4: If you have answered Question 3 "yes," then answer this question: Was such negligence a cause of the injuries to Thomas Pichette, Jr.?

Answer

Exhibit 17.

In the Pichette case I had put in my list of experts, however I stated that I was attempting to locate a veterinarian to oppose their Dr. Jones. I finally found one and the Judge refused to let him testify on direct or on rebuttal. Exhibit 18.

I apologize for not having the transcripts for this portion of my complaint. I have been trying to get them for more than 3 weeks and I still do not have them. I enclose the letters in which I ordered the Pre-Trial and the portion of the trial having

to do with the ex-parte discussion. Exhibit 19A and 19B.

After reviewing my notes and talking to an attorney who does Federal litigation, it is clear to me that the Judge and the two attorneys involved may fall under the Federal Civil or Criminal RICO Conspiracy Act. I am wondering if you will report this to the Federal Prosecutor or should I report it under separate cover?

Since there are two attorneys involved in this matter, will you report them to the Board of Professional Responsibility, or is that my client's responsibility?

I have presented all the above situations as best as I recollect them. The transcripts, pleadings and documents will explain where I have not done so. Even so, I apologize for the length of this letter. I welcome you to review any other files you think might be important. I felt under the Ethical Mandates, and on behalf of my

clients, that I was required to report this situation.

Sincerely,

/s Challoner Morse McBride

CMM:btr

Enclosures